

**STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
OFFICE OF CONSERVATION AND COASTAL LANDS
Honolulu, Hawaii**

October 12, 2007

**Board of Land and
Natural Resources
State of Hawaii
Honolulu, Hawaii**

REGARDING: Conservation District Enforcement File No. KA-06-77
Regarding Alleged Unauthorized Construction of Tension
Wire Fence Within the Conservation District Located at
Wainiha, Hanalei, Kauai,

BY: Anawalt Lumber Co. Inc.
c/o David Anawalt

TMK : (4) 5-9-02:31

AREA OF USE: Approximately 300 Linear Feet

AREA OF PARCEL: Approximately 104,000 square feet

SUBZONE: Limited

DESCRIPTION OF AREA:

The subject property is located on the shores of Kanaha Beach, Haena, Hanalei District, island of Kauai, TMK:(4) 5-9-02:31 within the Limited Subzone of the Conservation District (Exhibit 1). The subject fence is composed of wood posts and tension wire and was constructed within the shoreline area (Exhibit 2). The subject area is adjacent to a wide white sandy beach. According to the Atlas of Natural Hazards in the Hawaiian Coastal Zone, the subject area is in a medium to high Overall Hazard Assessment area (Exhibit 3).

ALLEGED UNAUTHORIZED LAND USES:

The Office of Conservation and Coastal Lands (OCCL) has received verbal complaints regarding the construction of a fence on the beach in June, 2006. Staff site visits as recent as July 23, 2007 confirm the subject fence is still in place and unaltered. Departmental records indicate that the subject parcel had a February 22, 1991 Certified

Shoreline recorded with the State. Based on the public complaint the OCCL investigated the matter and found there was no file on record with the DLNR for the subject fence.

A Notice and Order to cease activity in the Conservation District was mailed to the property owner on July 6, 2006 in regards to the unauthorized fence (Exhibit 4).

Mr. Anawalt responded to the Notice and Order by correspondence dated July 21, 2006 and stated the fence was erected for safety and security adding that the fence was constructed on private property well behind the shoreline and vegetation line and thus should not be considered a development. (Exhibit 5.)

In addition, the County of Kauai issued a Notice of Violation dated June 26, 2006, for Illegal Development/Placement of a Fence within the Special Management Area and the Shoreline Setback Area (Exhibit 6). No resolution of this matter has been reported to the OCCL.

RESOLUTION OF UNAUTHORIZED LAND USES:

Conservation District

Chapter 13-5, Hawaii Administrative Rules (HAR) and Chapter 183C, Hawaii Revised Statutes (HRS), regulate land uses in the Conservation District by identifying a list of uses that may be allowed by Conservation District Use Permit. The chapters also provide for penalties, collection of administrative costs and damages to state land for uses that are not allowed or for which no permit has been obtained. Chapter 13-5, HAR defines "land use" in part as: the placement or erection of any solid material on land or the grading, removing or dredging of any material or natural resource on land.

Hawaii Coastal Erosion Management Plan (COEMAP)

In 1999, the Board adopted the Hawaii Coastal Erosion Management Plan (COEMAP) and approved specific criteria to guide Staff to resolve cases involving unauthorized shoreline structures.

In assessing cases involving unauthorized shoreline structures, specific criteria are as follows:

1. Protect/preserve/enhance public shoreline access;
2. Protect/preserve/enhance public beach areas;
3. Protect adjacent properties;
4. Protect property and important facilities/structures from erosion damages; and

5. Implement a "no tolerance" policy for recent or new unauthorized shoreline structures.

The Department considers each case based on the specific circumstances/history. For instance, the age of the structure, the quality of the surrounding beach resources, the nature of the surrounding development, and the risk to life and limb are all evaluated to help formulate a position with respect to the disposition of the matter. For structures built after the 1999 "no tolerance" policy for unauthorized shoreline structures, the customary policy is to remove the structure without consideration of after the fact approvals.

The unauthorized construction of the fence is a land use that occurred in the Conservation District without a permit, and therefore allegedly violates the above chapters. This report and staff recommended conditions seek to resolve this conservation district violation. Pursuant to Chapter 183C, HRS, the maximum fine for a conservation district violation is \$2,000.00 per violation.

DISCUSSION

Staff recommends that the fence within the Conservation District be removed following the logic of the DLNR's "no tolerance" policy in regards to shoreline structures constructed after 1999. While the subject fence appears to be relatively minor in direct impact to shoreline processes it is representative of an evolving land use problem around the state involving landowner's efforts of restricting public access within the shoreline area that may be within the public trust. The case exemplifies a widespread land use problem in many shoreline areas that has led to the reduction of sandy beach access in areas like Haena and Wainiha on Kauai and Kahala and Kailua on Oahu. The Haena-Wainiha area appears to be particularly vulnerable to this problem and was the subject of a recent OCCL site visit (July, 23 2007) and status report related to allegations of unauthorized landscaping in the area (Exhibit 7). In many cases, once these landscaped areas are well established they not only narrow the usable sandy beach but in turn retard the run-up of the waves and thus the location of the shoreline.

Some of these efforts are becoming more subtle with allegations that landowners are landscaping the shoreline area with native groundcover to hide the newly planted vegetation along the beach. The OCCL has also received reports from other DLNR Divisions that the landscaping practices observed may be encroaching on the habitat of endangered species in the area such as Green Sea Turtles and Wedge-Tailed Shearwaters (Exhibit 7). The OCCL has received repeated complaints of landscaping seaward of the shoreline throughout the region. The problem is worsening with vegetation that appears to be encroaching seaward over time and large vegetated areas covering what was recently the sandy beach seaward of shoreline.

Staff is able to enforce on this case since the fence is clearly a violation of existing land use rules. However, the alleged unauthorized landscaping and subsequent vegetation encroachment is more difficult to enforce due to questions about natural verse "induced"

vegetation. Nevertheless, a recent OCCL summary report for this area lists this property as one of three "High Priority" areas for active intervention and recommends a multi-party participatory approach to beach management and restoration practices here.

Kanaha beach epitomizes the finest and most valuable assets for recreational beaches on Kauai and deserves special attention to protect this unique and fragile public resource. Staff believe recent community-lead efforts to initiate State and County authorized beach management and restoration projects currently offer the most immediate and viable approach to responding to the problem of encroaching vegetation on the beach in this region. The OCCL is supportive of these efforts.

This submittal and notice of the Board's meeting will be sent to the property owner's counsel by certified mail to the address of record in Hawaii.

FINDINGS

1. That the landowner did in fact, authorize, cause or allow the unauthorized construction of the structure (fence) to occur;
2. That the structure lies within the State Land Use Conservation District, Resource subzone;

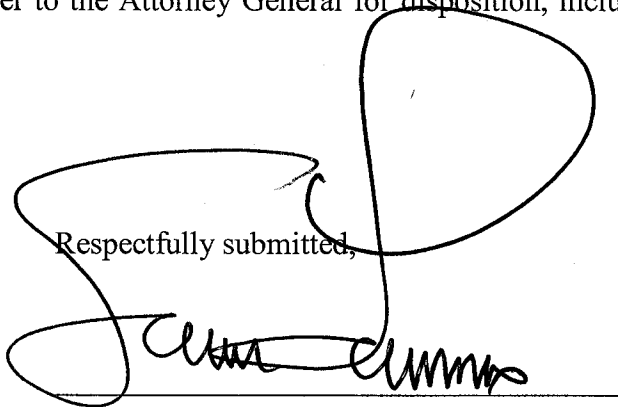
AS SUCH, STAFF RECOMMENDS AS FOLLOWS:

That, pursuant to Chapter 183C, Hawaii Revised Statutes (HRS), the Board finds the landowner in violation of Chapter 183C and Chapter 13-5, Hawaii Administrative Rules (HAR), and is subject to the following:

1. The landowner violated the provisions of Chapter 183C, Hawaii Revised Statutes (HRS), and Chapter 13-5, Hawaii Administrative Rules (HAR), in one instance by constructing a shoreline fence structure. The landowner is fined a total of \$2,000.00 for one Conservation District violation;
2. The landowner is fined an additional \$500.00 for administrative costs associated with the subject violation;
3. The landowner shall pay all fines (total \$2,500.00) within sixty (60) days of the date of the Board's action;
4. The landowner shall remove the fence within thirty (30) days of the BLNR's decision;
5. Within 45 days of the decision, a Departmental Representative shall inspect the shoreline for compliance;

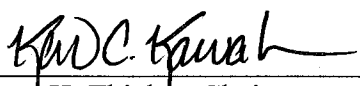
6. The landowner shall comply with all applicable statutes, ordinances, rules, and regulations of the Federal, State and County governments;
7. That in the event of failure of the landowner to comply with any order herein, the landowner shall be fined an additional \$2,000.00 per day until the order is complied with; and
8. That in the event of failure of the landowner to comply with any order herein, the matter shall be turned over to the Attorney General for disposition, including all administrative costs.

Respectfully submitted,

A large, stylized handwritten signature in black ink, appearing to read 'Samuel Lemmo', written over a horizontal line.

Samuel Lemmo, Administrator
Office of Conservation and Coastal Lands

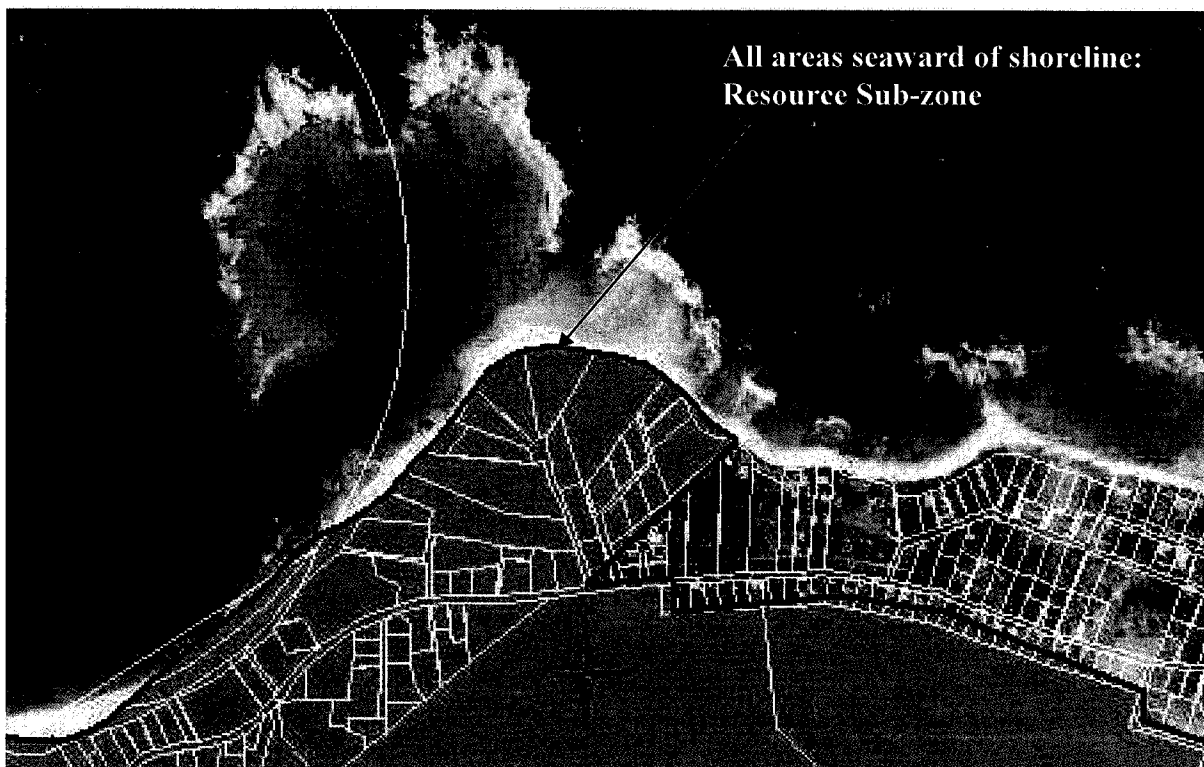
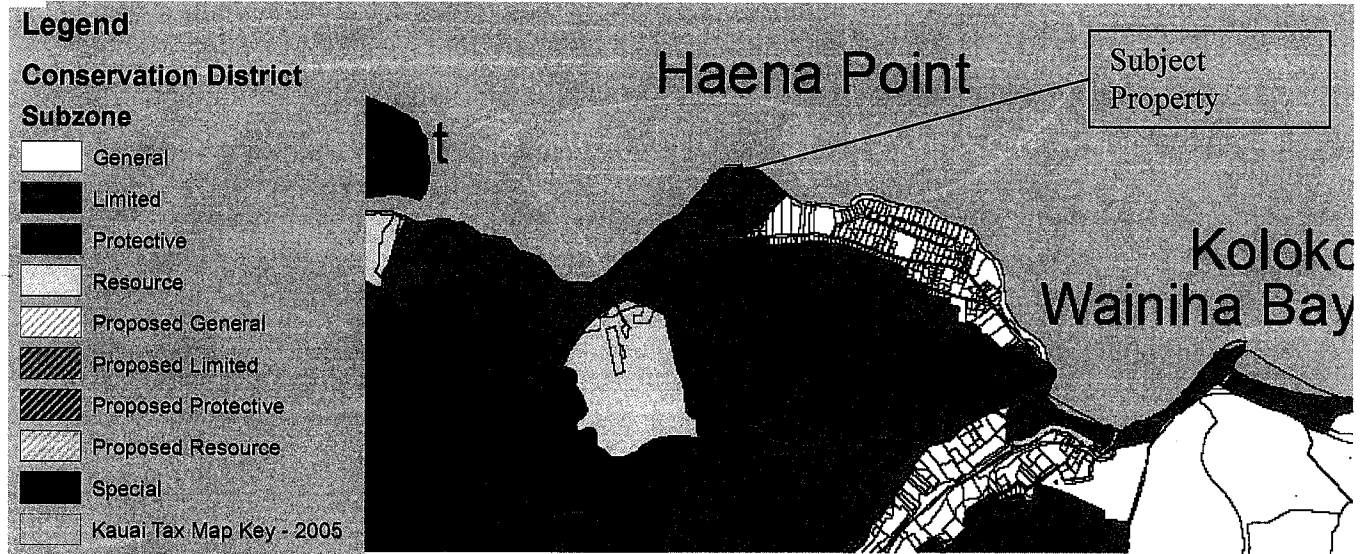
Approved for submittal:

for 

Laura H. Thielen, Chairperson
Board of Land and Natural Resources

**Exhibit 1.
Subzone Maps**

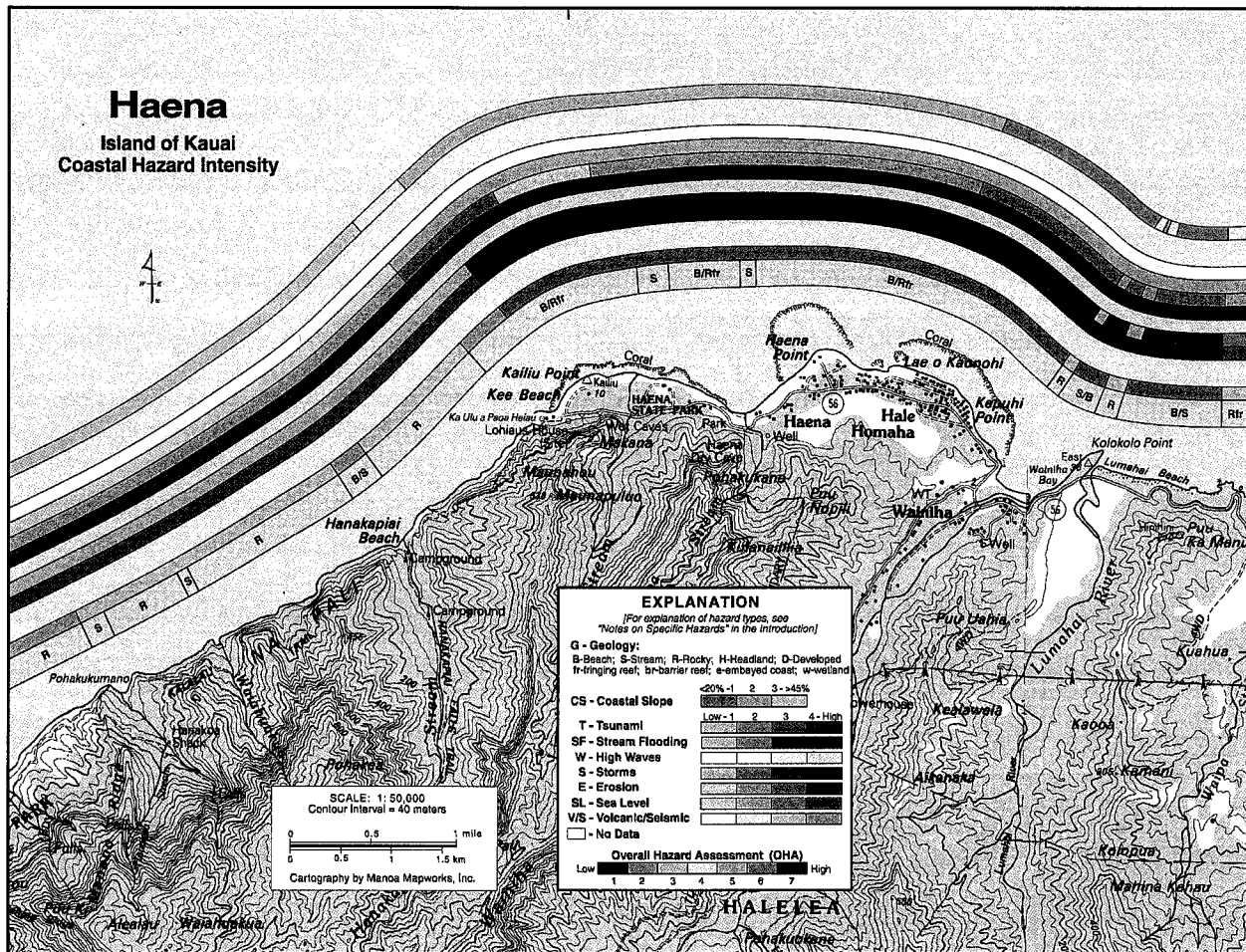
**STATE OF HAWAI'I
CONSERVATION DISTRICT
SUBZONES -
Island of Kaua'i**



**Exhibit 2.
Subject Fence**



Exhibit 3.
Atlas of Natural Hazards in the Hawaiian Coastal Zone





POST OFFICE BOX 621
HONOLULU, HAWAII 96809

[illegible]

Violation: KA-06-77

9

Exhibit 5. Anawalt Response
ANAWALT LUMBER CO., INC.

11060 W. Pico Blvd. • Los Angeles, CA 90064 • (310) 478-0324 • FAX (310) 473-7418



SINCE 1923

21 July 2006

Mr. Sam Lemmo
Dept. Of Land and Natural Resources
Office Of Conservation & Coastal Lands
1151 Punch Bowl St.
Honolulu, Hawaii 96813

Re: Violation: KA-06-77 at TMK (4) 5-9-02:31

Certified Mail

Dear Mr. Lemmo:

I am in receipt of your letter dated July 6, 2006 concerning a violation. I was surprised by this.

My family has great respect for the Hawaiian culture, their customs and the State's regulations. When our house was completed we had the local Kupuna, Margret Panui, come to bless the site and house, we take these traditions seriously. We had no idea that this fence could be considered a violation.

Due to a recent theft (Kauai police report # 06-7061) and repeated trespasses we decided to erect a fence. We have had problems with transients, locals and visitors using our lawn and vegetation to urinate and defecate in. Additionally, some locals used our lawn, regularly, to sunbath in the nude (they used our outdoor shower to cool off!). Finally, some hoodlums started driving their ATV's at high speed through our yard to gain access to the beach. I have a six-year old daughter and was concerned for her safety. To resolve these problems we erected a wood post and field wire fence.

The fence is well back from the shoreline. It is back from the vegetation line. It was erected on our lawn and along the mauka side of wide (and natural) hedges of naupaka. The naupaka will soon cover the fence and it will be invisible from the beach.

Again, this fence is not on the shoreline, in the shoreline set back, the beach, or even the makai side of wide and natural hedges of naupaka, (the vegetation line). The fence sits on our private property, far from the above-mentioned boundaries. We have simply erected a 4' fence to protect our property from vandalism and trespassing. We have done nothing that could be considered a development.

I hope that in light of these facts this violation can be dropped. Please contact me if I can answer any further questions. I look forward to hearing from you.

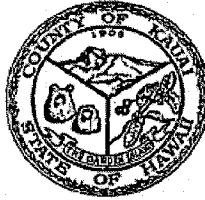
Very truly yours,

David Anawalt

**Exhibit 6.
County Notice**

BRYAN J. BAPTISTE
MAYOR

GARY K. HEU
ADMINISTRATIVE ASSISTANT

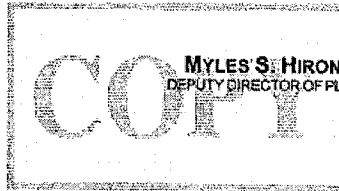


COUNTY OF KAUAI
PLANNING DEPARTMENT
4444 RICE STREET
KAPULE BUILDING, SUITE A473
LIHUE, KAUAI, HAWAII 96766-1326

TELEPHONE: (808) 241-8677 FAX: (808) 241-6699

IAN K. COSTA
DIRECTOR OF PLANNING

MYLES S. HIRONAKA
DEPUTY DIRECTOR OF PLANNING



*Violation
KA-06-77*

CERTIFIED MAIL

NOTICE OF VIOLATION

RECEIVED
COUNTY OF KAUAI
PLANNING DEPARTMENT
JUN 26 2006
8 A 49
DEPT. OF LAND &
NATURAL RESOURCES
STATE OF HAWAII

To: Owner Anawalt Lumber Co. Inc. c/o David Anawalt

RE: Illegal Development/Placement of Wood Post and Field Wire Fencing within the
Special Management Area and the Shoreline Setback Area.

ADDRESS: 11606 West Pico Blvd.

Los Angeles, California 90064

TAX MAP KEY: (4) 5-9-002:031

I have this day inspected the premises described above and have found the following violations
of laws and regulations governing same, within the County of Kauai under the jurisdiction of the
Planning Department. DATE June 15, 2006

ORDINANCES & SECTIONS

Special Management Area Rules and
Regulations Section 1.0 Pursuant to 1.4
(H) (1): "Development" means any of the
uses, activities or operations on land or in
or under water within a Special Management
Area that are included below (1) Placement
or erection of any solid material ...

Shoreline Setback Rules and Regulations
Sections 10 b. - Prohibited activities
within the Shoreline Setback b. "No
structure or any portion thereof ... shall be
permitted within the shoreline setback."

VIOLATION(S)

The placement/construction of a wood post
and field wire fencing constitutes
development and erecting of such fence
without proper permits constitutes a
violation.

The placement/construction a wood post
and field wire fencing within the shoreline
setback area constitutes a violation.

AN EQUAL OPPORTUNITY EMPLOYER

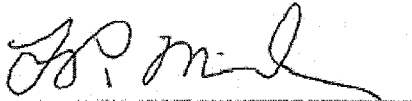
Anawalt Lumber Co. Inc. c/o David Anawalt

Page 2

June 26, 2006

- ☐ Use of the property is contrary to existing laws.
- ☐ You are hereby ordered to submit an SMA Use Permit(s) application for "Development" established upon the premises as required by law within 15 calendar days from the date of this notice, and
- ☐ You are hereby notified that no more work shall be done upon these premises or the use on said premises continued until the above violation(s) is/are corrected.
- ☒ You are hereby ordered to remove all wood post and field wire fencing from the "Shoreline" and "Shoreline Setback Area" within 15 calendar days from the date of this notice.
- ☒ If no corrective action is taken, judicial action will be instituted.

Failure to contact the Planning Department within 7 calendar days from the date of this letter to provide a written acceptable plan for compliance to the above noted requirements provides us with no other alternative but to refer this matter to the County Attorney's Office and Prosecutor's Office. Should you have any questions, please call me at 241-6677.

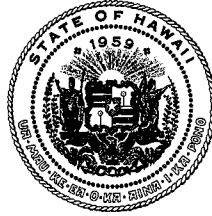
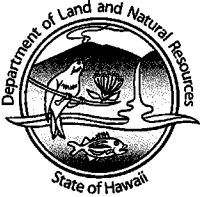


LESLIE P. MILNES
CZM Planning Inspector

cc: County Attorney
Prosecuting Attorney
Office of the Mayor
Dept of Public Works, Engineering
DLNR, Kauai Land Agent
DLNR, Office of Conservation and Coastal Lands

Exhibit 7. OCCL Haena Status Report

LINDA LINGLE
GOVERNOR OF HAWAII



STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
OFFICE OF CONSERVATION AND COASTAL LANDS
POST OFFICE BOX 621
HONOLULU, HAWAII 96809

LAURA H. THIELEN
INTERIM CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

ALLAN A. SMITH
INTERIM DEPUTY DIRECTOR - LAND

KEN C. KAWAHARA
DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES
BOATING AND OCEAN RECREATION
BUREAU OF CONVEYANCES
COMMISSION ON WATER RESOURCE MANAGEMENT
CONSERVATION AND COASTAL LANDS
CONSERVATION AND RESOURCES ENFORCEMENT
ENGINEERING
FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

REF:OCCL:DE

August 15, 2007

MEMORANDUM:

TO: Sam Lemmo, Administrator
Office of Conservation and Coastal Lands

FROM: Dolan Eversole, Coastal Geologist
University of Hawaii Sea Grant Program

Subject: Follow up Site Inspections for Haena-Wainiha, Kauai. Coastal Landscaping and Land Use Issues.

Under the authority of the Department of Land and Natural Resources (DLNR), Office of Conservation and Coastal Lands (OCCL) I recently carried out a shoreline site inspection for the subject area on July 23, 2007. This inspection was conducted based on repeated complaints from the community and as part of an effort to follow up and document the status of several alleged and pending Conservation District violations. The purpose of the site inspection is to offer a qualitative assessment of the existing shoreline conditions and document any perceived land use violations for the purpose of evaluating the impact of alleged shoreline uses and landscaping practices on the coastal ecosystem and recreational access.

The site visit was conducted on foot and the following report includes observations made during the site visit and recommendations for responding to the complaints of shoreline landscaping and land use in this region.

Site Inspection Conditions**Date:** June 23, 2007**Time:** 10:00 to 2:00pm**Personnel:** Dolan Eversole (OCCL), Caren Diamond (Sierra Club/Resident), Beau Blair (Resident)**Marine Conditions:** North Swell 1-3 ft faces, East winds 10-20 mph,

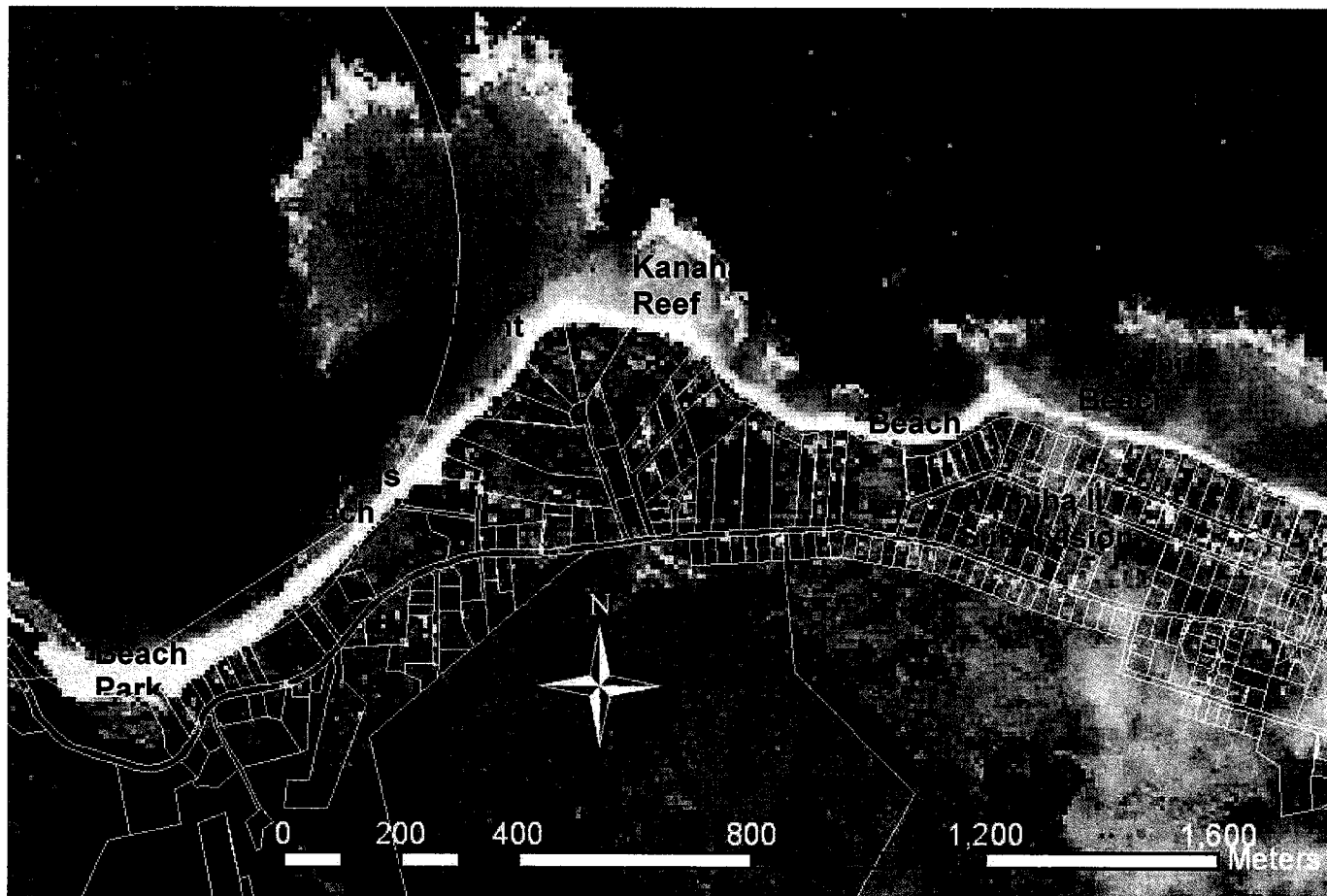
Low Tide (Lihue) 10:30AM +0.11ft

High tide 06:15PM +2.32 ft

Tradewinds 15-20 mph, sunny low tide

General Setting:

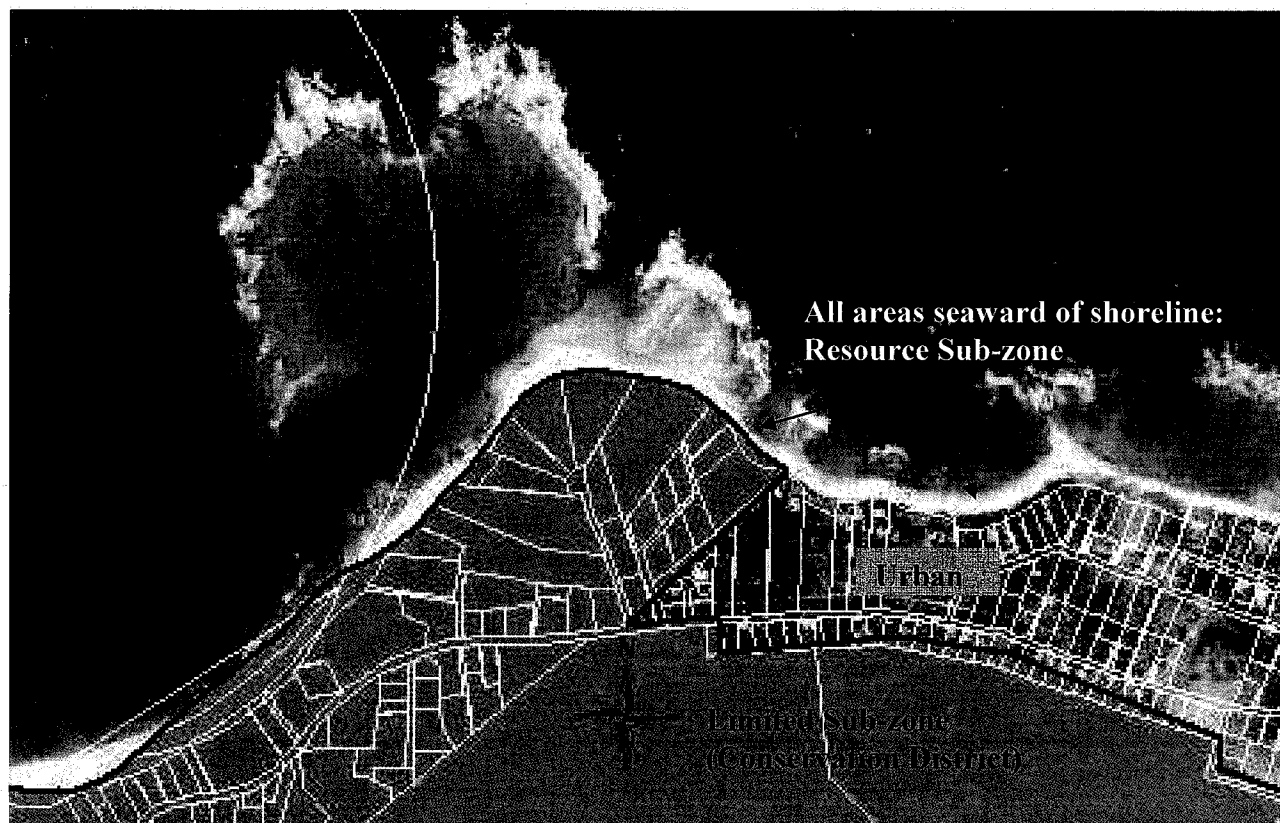
Project area is characterized by medium to coarse, poorly sorted tan carbonate beach sands. Beach slopes are typically steep ~1:10 (V:H) slope with the exception of Haena Point where the beach slope is closer to 1:20 on the dry beach. The primary dune is low and heavily vegetated with mostly native shrubs and ground cover. The sandy beach is contiguous in this area and varies dramatically in width and seasonal stability. Typically the foreshore of this region is steep due to the consistent erosive forces even in the summer months. The region is dominated by a series of well-developed shallow fringing coral reefs that play a large part in the shape and orientation of the beaches. The reefs also influence seasonal wave run up during the winter months and thus partially control the certified shoreline location. This area is also reknown for productive nearshore fishing and other recreational uses.

Site Inspection Region Haena, Kauai

Site Inspection Summary:

Property (TMK)	Complaint	Observation and Notes
5-9-5:20 (Bendor)	Construction Fence	Chain link fence within setback.
5-9-5:23-27 (Cooke)	1996 "emergency" sandbags	Emergency passed, remove?
5-9-5:29 (Browning)	Shoreline fence	Past violation closed? Fence still in place
5-9-2:30	DAR/DOFAW habitat concerns	Shoreline landscaping?
5-9-2:31 (Anawalt)	DAR/DOFAW habitat concerns	Violation for fence, plantings?
5-9-2:32 (Steelquist)	DAR/DOFAW habitat concerns	Violation for fence, plantings?
5-9-2:22	Akiaki sprigs and Naupaka	Possible plantings
5-9-2:21	Landscaping growing seaward	Seaward encroaching vegetation
5-8-10:17 (YMCA)		Pending violation for fence
5-8-9:25 (Smith)	Fence and planting naupaka landward of fence	Pending violation for fence- Contested case
5-8-9:57	Landscaping growing seaward	Landscaping encroaching seaward
5-8-9:58	Landscaping growing seaward	
5-8-9:41 (Lot 2)	Landscaping growing seaward, no certified shoreline	Removed vegetation regrowing old photos show no vegetation at all.
5-8-9:42 (Lot 3)	Landscaping growing seaward, very thick naupaka hedge	Most seaward vegetation, Naupaka overtaking lilies
5-8-9:43 (Lot 4)	Landscaping growing seaward	Recently trimmed back
5-8-9:45 (Lot 6)	Trees cut, vegetation grew in	No new plantings, multiple burials
5-8-9:46 (Lot 7)	No recent planting but encroaching seaward	Subject to Supreme Court setback decision 60'
5-8-9:47 (Lot 8)	Entire dune planted	Shoreline under appeal, thick naupaka hedge.
5-8-9:48 (Lot 9)	Old plantings encroaching seaward, Recent removal	House on lot, owner accused Ms. Diamond of trespassing
5-8-9:49 (Lot 10)	Akiaki plantings	Minor Akiaki growth
5-8-9:50 (Lot 11)	Old plantings encroaching seaward, construction fence	Vacant lot under construction, construction fence. Owner claims vandal pulling vegetation.
5-8-9:51 (Lot 12)	Old plantings encroaching seaward,	Sand stockpiled on property, fence partially on shoreline.
5-8-8:34&36 (Trig station)	Planted shoreline, loss of access, history of dirt fill and fertilizer	Seasonal erosion, encroaching vegetation
5-8-8:38 (Michaels)	Planted shoreline seaward of shoreline	Seaward encroaching vegetation

The area subject to this investigation is partially developed and with land use zoning varying from Limited sub-zone of the Conservation District to Urban zoning in the Wainiha II subdivision. The area seaward of the shoreline is zoned Resource (Conservation District) in all areas and the green shading below represents the Limited subzone of the Conservation District.

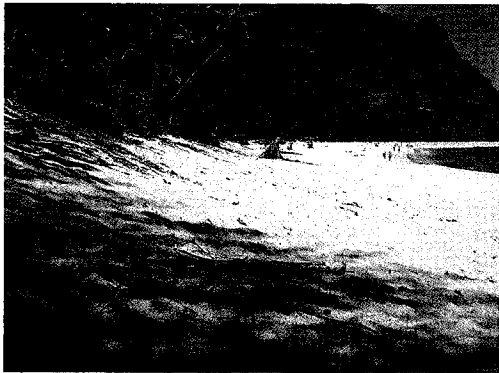
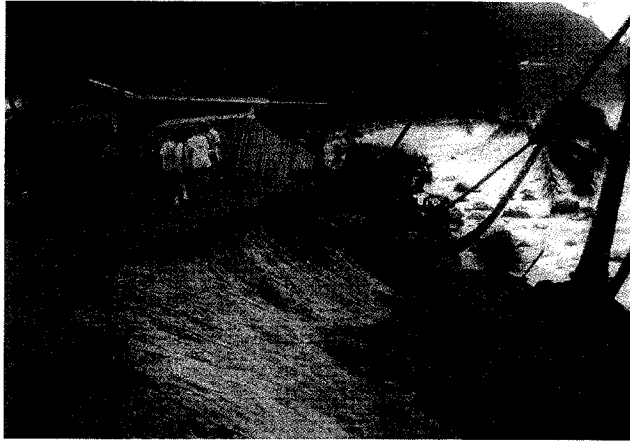


Site Inspection Observations:

5-9-5:20 (Bendor) Construction Fence Chain link fence within setback. New dwelling subject of contested case for setback and height.



5-9-5:23-27 (Cooke) 1996 emergency SMA permit “emergency” sandbags Emergency passed, remove. No deadline and question the need for bags. Recommend removal of all the bags and development of long-term retreat strategy. This is a high-value recreational beach (one of the best in the state) that warrants proactive conservation and protection.

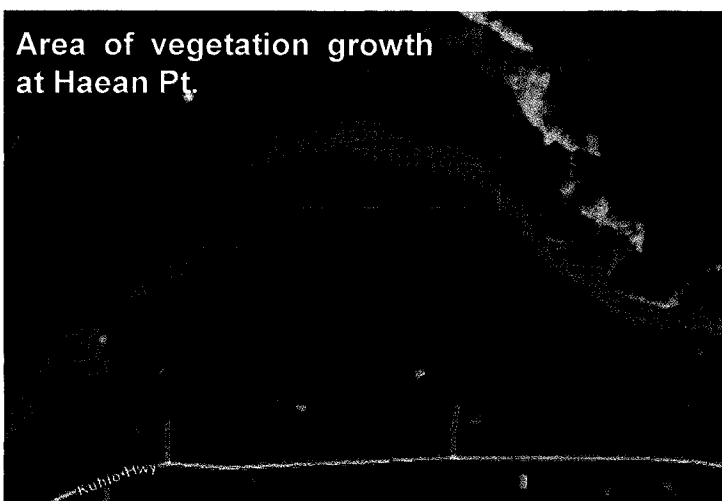
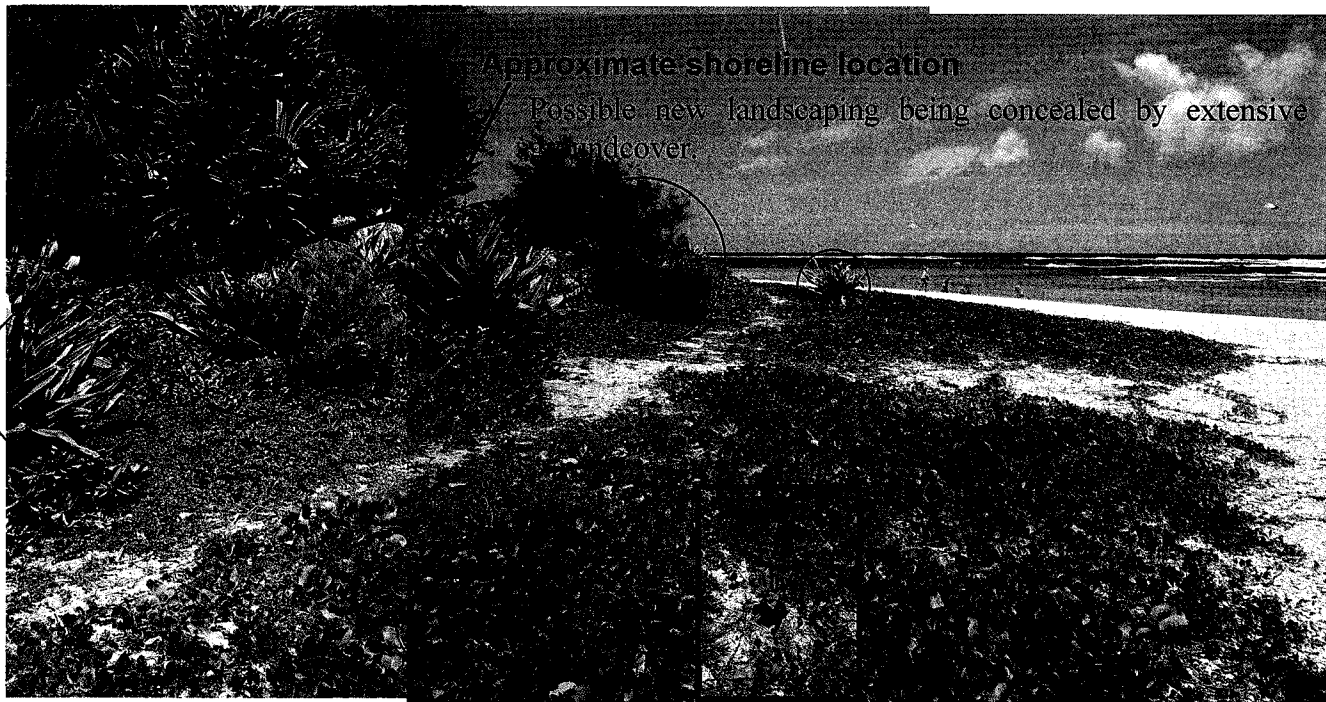


5-9-5:29 (Browning) Shoreline fence along shoreline Past violation closed? Fence still in place



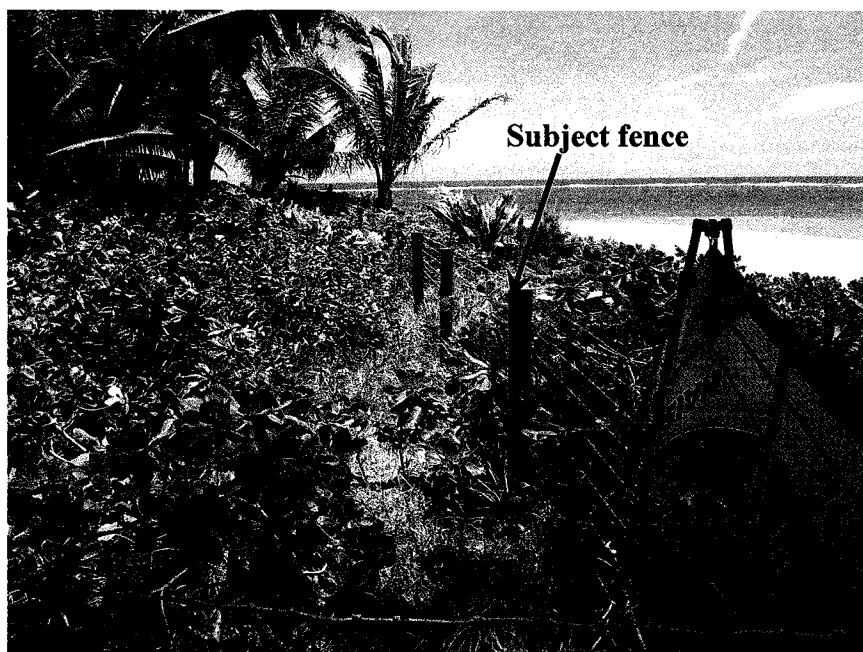
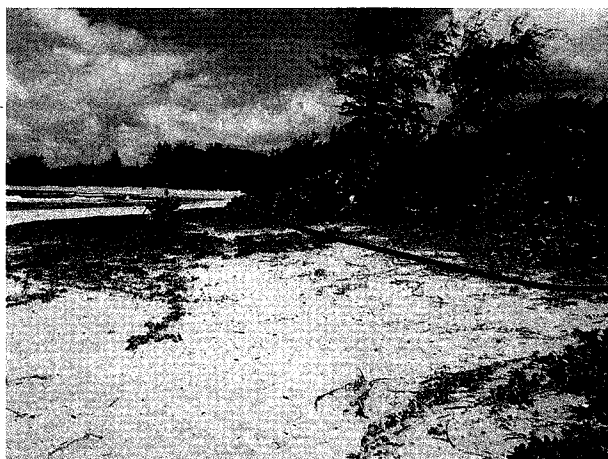
5-9-2:30 DAR/DOFAW habitat concerns (See Attachment 1) Shoreline landscaping? Not clear where property line is. Complaints of landscaping seaward of the shoreline. Vegetation appears to be encroaching seaward over time and large vegetated area covers beach seaward of shoreline. Complainant claims Ironwood trees (1-4 ft) appeared overnight and spiderlillies, Akiaki grass and morning glory are planted. Some vegetation shows signs of fertilizer burns and lack of horizontal root structure indicating it may have been planted rather than naturally rooted. Vegetation shows signs of maintenance with unusual vertical shoots and lack of offshoots. Appears the ground cover (naupaka and Morning glory) may be used to conceal other newly planted vegetation. Spoke to landscaper Mark Soppaland (808) 826-6183 regarding landscaping practices. Claims no landscaping conducted seaward of shoreline but only landward. Shoreline located approximately 30 feet landward of edge of vegetation. No obvious signs of sprinklers.

Recommendations: Initiate effort to clear vegetation seaward of the shoreline. Encourage landowners to not landscape seaward of the shoreline. Establish dune landscaping guidelines and conduct community workshops. Collaborate with Sierra Club (Weed the Beach program) to conduct a community clean up of this area.



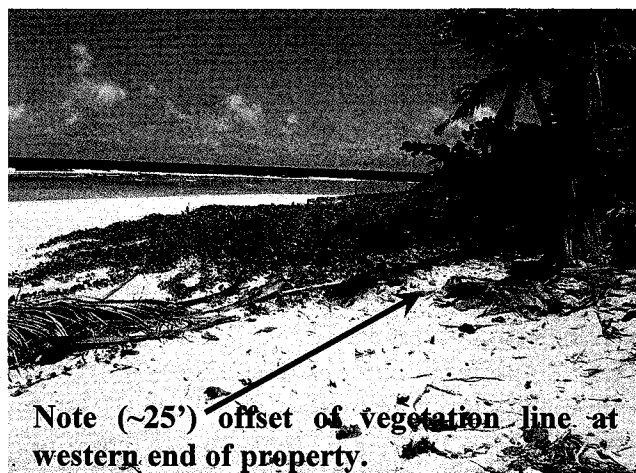
5-9-2:31 (Anawalt) Pending violation for unauthorized fence along shoreline (Violation # KA-06-77). DAR/DOFAW habitat concerns (See Attachment 1) Shoreline landscaping? Not clear where property line is. Complaints of landscaping seaward of the shoreline. Vegetation appears to be encroaching seaward over time and large vegetated area covers beach seaward of shoreline. Complainant claims Ironwood trees (1-4 ft) appeared overnight and spiderlillies, Akiaki grass and morning glory are planted. Some vegetation shows signs of fertilizer burns and lack of horizontal root structure indicating it may have been planted rather than naturally rooted. Vegetation shows signs of maintenance with unusual vertical shoots and lack of offshoots.

Recommendations: Immediate removal of unauthorized fence. Initiate effort to clear vegetation seaward of the shoreline. Encourage landowners to not landscape seaward of the shoreline. Establish dune landscaping guidelines and conduct community workshops. Collaborate with Sierra Club (Weed the Beach program) to conduct a community clean up of this area.



5-9-2:32 (Steelguist) Pending violation for unauthorized fence along shoreline (Violation # KA-06-78). DAR/DOFAW habitat concerns (See Attachment 1) Shoreline landscaping? Not clear where property line is. Complaints of landscaping seaward of the shoreline. Vegetation appears to be encroaching seaward over time and large vegetated area covers beach seaward of shoreline. Complainant claims Ironwood trees (1-4 ft) appeared overnight and spiderlillies, Akiaki grass and morning glory are planted. Some vegetation shows signs of fertilizer burns and lack of horizontal root structure indicating it may have been planted rather than naturally rooted. Vegetation shows signs of maintenance with unusual vertical shoots and lack of offshoots.

Recommendations: Immediate removal of unauthorized fence. Initiate effort to clear vegetation seaward of the shoreline. Encourage landowners to not landscape seaward of the shoreline. Establish dune landscaping guidelines and conduct community workshops. Collaborate with Sierra Club (Weed the Beach program) to conduct a community clean up of this area.



5-9-2:21 & 22 Not clear where property line is. Complaints of past landscaping seaward of the shoreline. Vegetation appears to be encroaching seaward over time and large vegetated area covers beach seaward of shoreline. Old irrigation now removed but vegetation may have been established to be self supporting. No obvious signs of watering or planting at this time.



5-8-10:17 (YMCA) Not clear where property line is. Pending violation for unauthorized fence along shoreline (Violation # KA-06-81).



5-8-09:57 (Smith) Pending violation for unauthorized fence along shoreline (Violation # KA-06-72- contested case). Vegetation appears to be growing seaward not clear if it is natural or landscaped. Subject material all seaward of shoreline.



5-8-09:58 & 25 Vegetation appears to be growing seaward not clear if it is natural or landscaped. Subject material all seaward of shoreline.



5-8-09:41 (Lot 2) Previous supreme court case regarding shoreline certification based on planted vegetation. Vegetation appears to be growing seaward, efforts to remove vegetation ineffective. Subject material all seaward of shoreline. Older photos show dramatic change in vegetation due to landscaping. Newly planted grass and naupaka within setback area.



5-8-09:42 (Lot 3) Vegetation appears to be growing seaward. Subject material all seaward of shoreline. Older photos show dramatic change in vegetation due to landscaping. Most seaward vegetation in area.



5-8-09:45 (Lot 6) Vegetation appears to have grown seaward in the past but is stable more recently. Older photos show dramatic change in vegetation due to landscaping. Contested shoreline and setback. Multiple burials discovered within setback area (28).



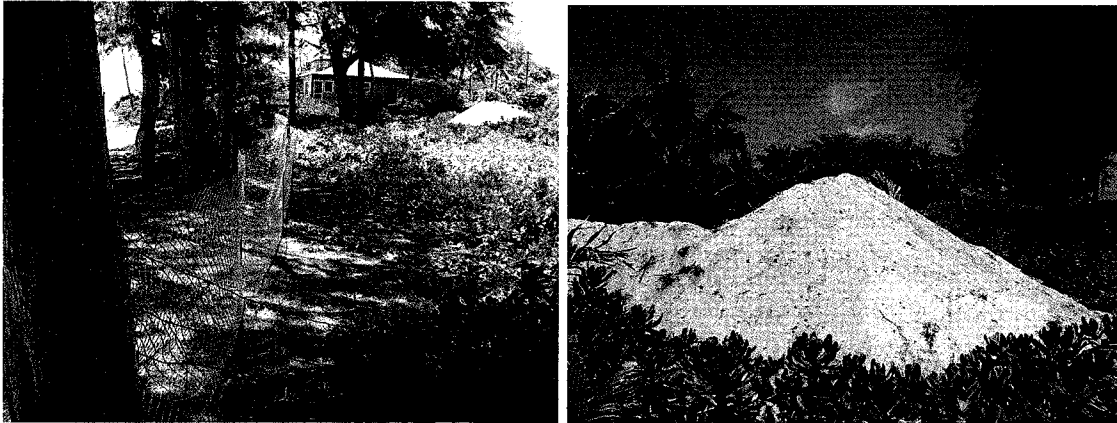
5-8-09:47 (Lot 8) Vegetation appears to have grown seaward in the past but is stable more recently. Older photos show dramatic change in vegetation due to landscaping. Shoreline under appeal. Naupaka very thick and appears to be inhibiting the wave run-up.



5-8-09:48 (Lot 9) Vegetation appears to have grown seaward in the past but is stable more recently. Older photos show dramatic change in vegetation due to landscaping. House on lot, owner accuses Mrs. Diamond of recent vegetation removal.



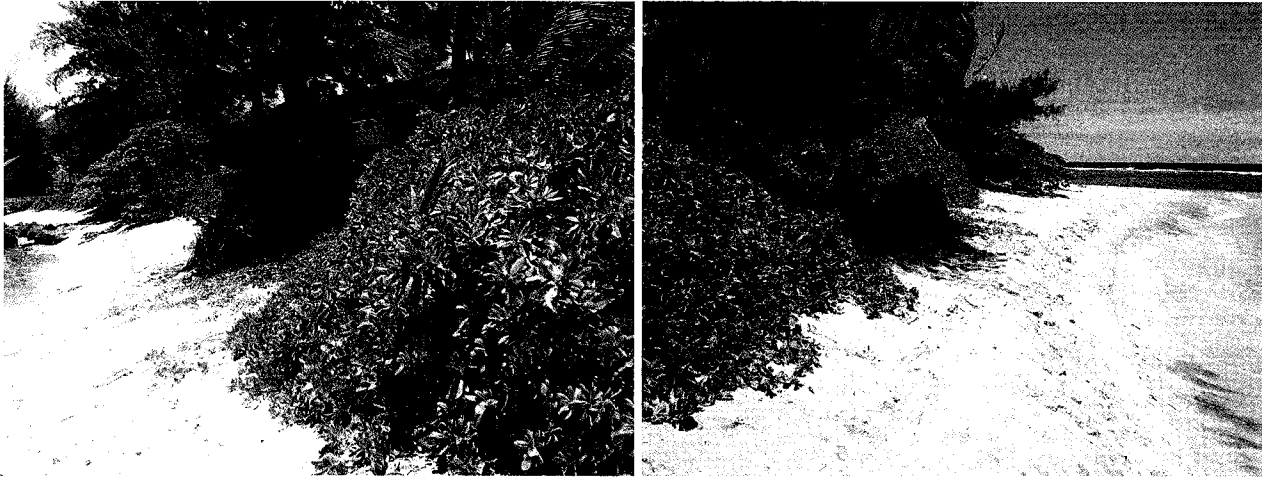
5-8-09:50 (Lot 11) Vegetation appears to have grown seaward in the past but is stable more recently. Older photos show dramatic change in vegetation due to landscaping. Excavation for house foundations. Construction fence situated at shoreline.



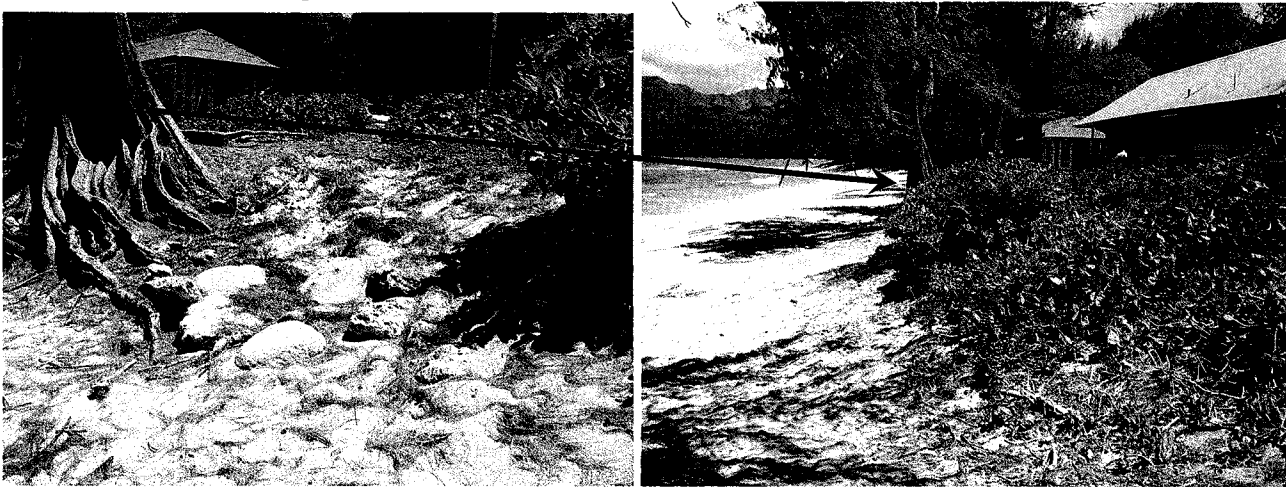
5-8-08:38 (Michaels) Vegetation appears to have grown seaward more recently. Past complaints of landscaping seaward of the shoreline and burying rocks to create a wall within the dune. Vegetation excursion down beach face. Complaints of planted vegetation (naupaka and Heliotrope) seaward of 2003 shoreline. 2003 shoreline shown in red (no vegetation present at that time).



5-8-08:36 (State triangulation station) Vegetation appears to have grown seaward more recently. Past complaints of landscaping seaward of the shoreline, fill, fertilizer and watering. Vegetation excursion down beach face. Seasonal erosion threatens access in this area. Past photographs reveal a more landward vegetation line. Public access lost partially due to encroaching vegetation.

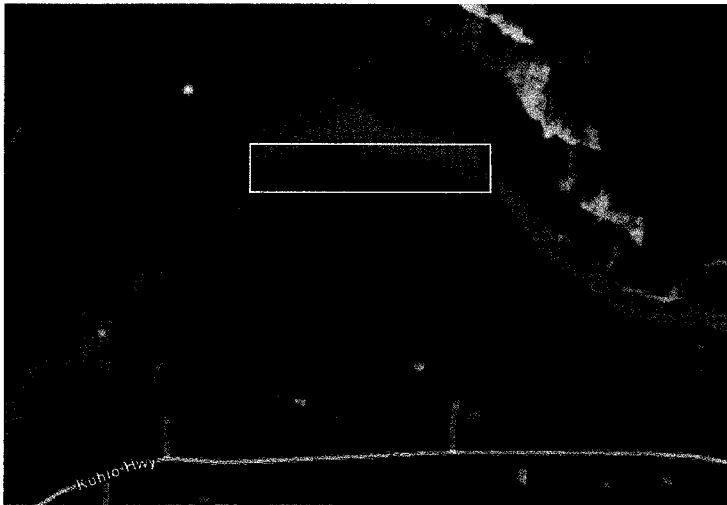


5-8-12:07 (Michaels) Vegetation appears to have grown seaward more recently. Past complaints of landscaping seaward of the shoreline and burying rocks to create a wall within the dune (see 5-8-8:38). Vegetation excursion down bank. Complaints of rocks placed seaward of 2003 shoreline. Observed 11 rocks next to ironwood tree. Will monitor for change. Shoreline may be landward of dwelling.

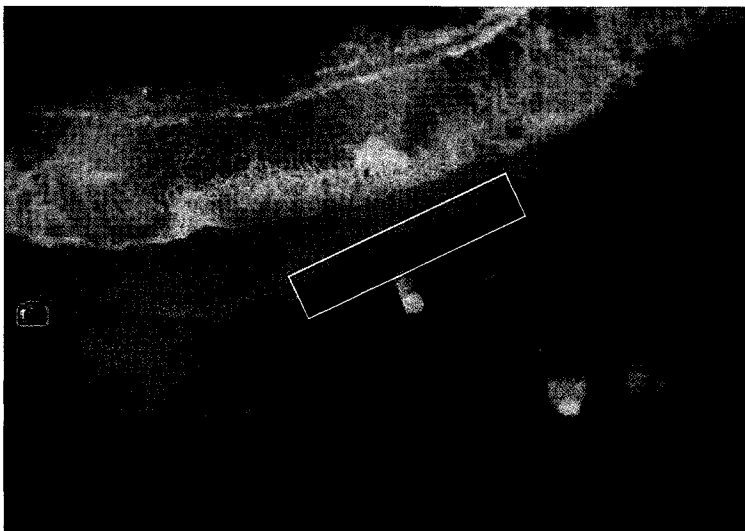


General Regional Recommendations:

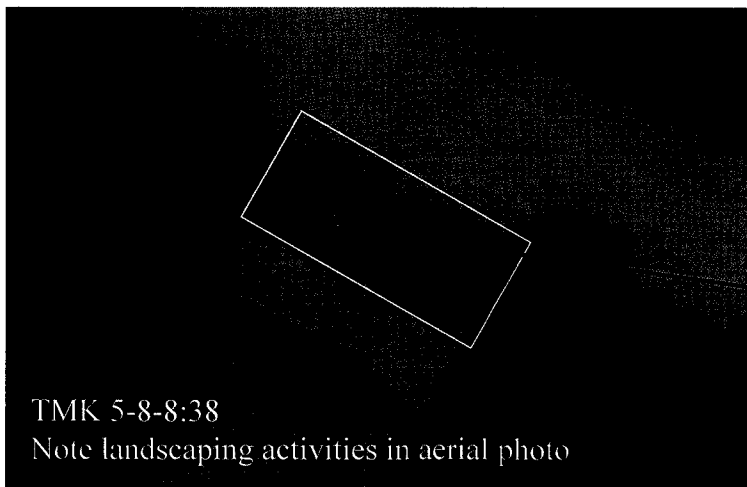
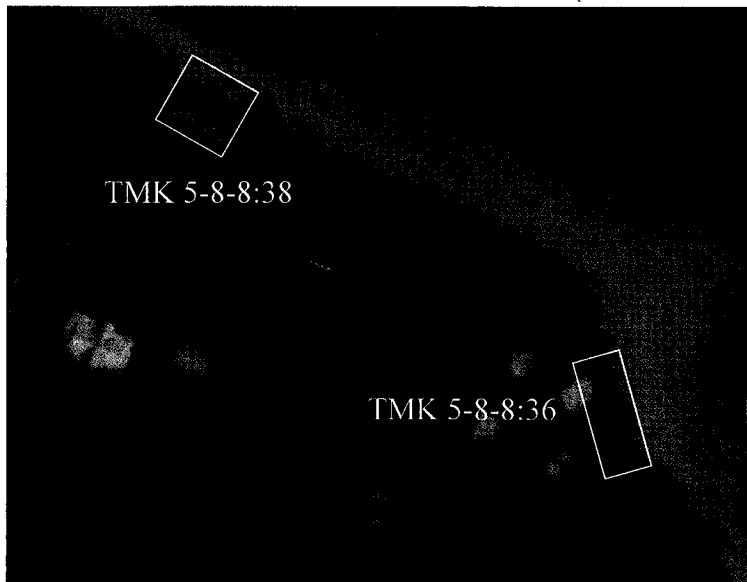
1. Regular monitoring of land uses and landscaping activities.
 - a. Quarterly site inspections and photo-documentation of seaward excursion of vegetation.
 - b. Measure and document new vegetation for signs of landscaping.
2. Establish seaward "limit" to vegetation and encourage and support removal efforts seaward of this line.
3. Identify priority areas for vegetation removal through community cleanups.
 - a. **TMK 5-9-2:30-33** (Conservation Land and habitat concerns for endangered species).



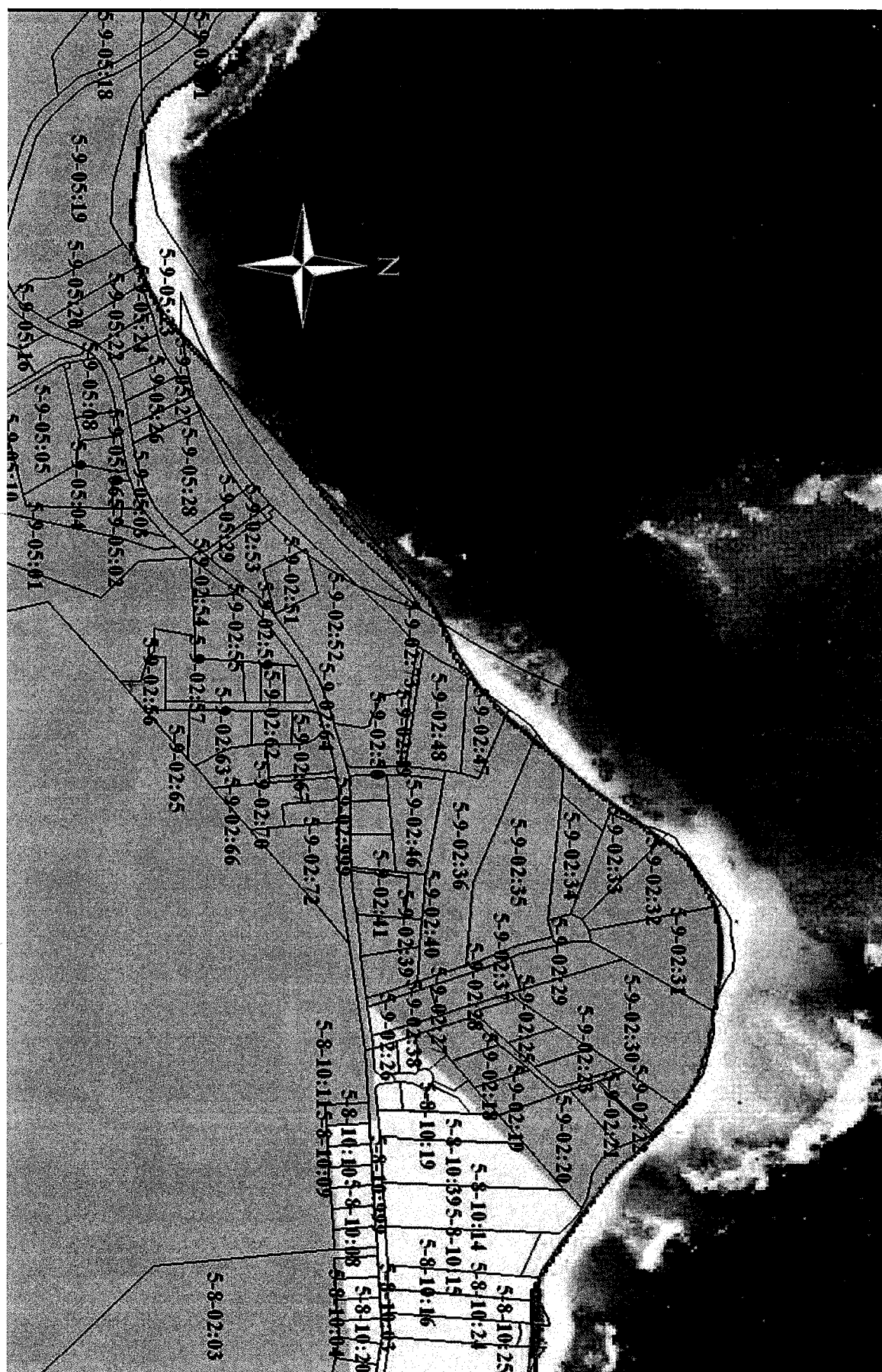
- b. **TMK 5-9-2:23-27** (Conservation Land and Sandbags) Emergency status passed "temporary" nature gone. Bags should be removed and dwellings relocated.

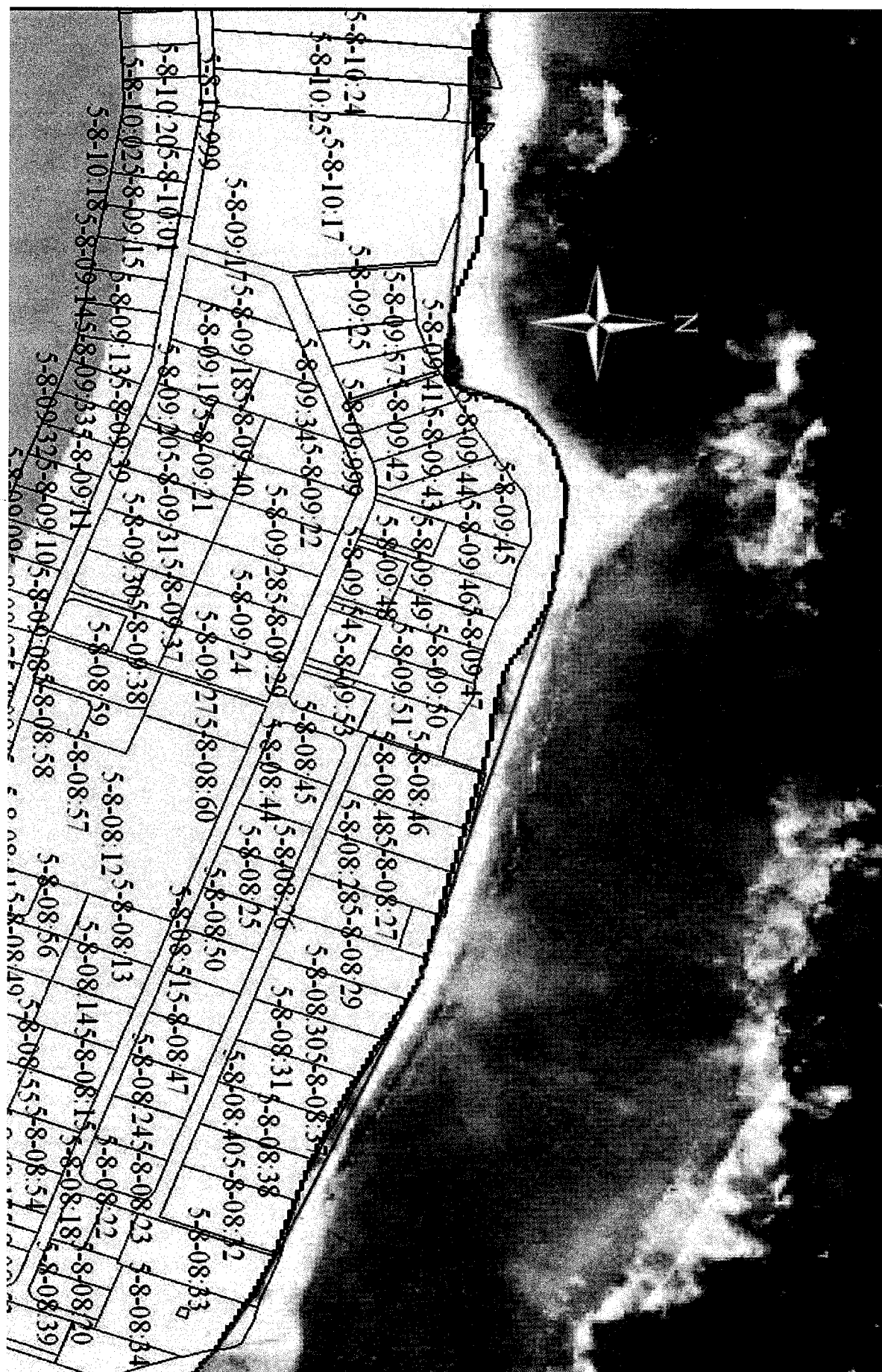


c. **TMK 5-8-8:36 & 38** Most seaward and access restricting areas.



4. Develop a dune restoration and landscape plan and implement education program for landowners and their landscapers.
5. Develop partnership agreements with relevant resource agencies and groups to develop and implement dune restoration and public access plan.
 - a. State of Hawaii DLNR, OCCL
 - b. County of Kauai Planning Department
 - c. County of Kauai Open Space Commission.
 - d. Hawaii Coastal Zone Management (CZM) Program
 - e. University of Hawaii Sea Grant Program
 - f. Office of Hawaiian Affairs





Attachment 1. DOFAW Site Report

LINDA LINGLE
GOVERNOR OF HAWAII



**STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES**

DIVISION OF FORESTRY AND WILDLIFE
KAUAI DISTRICT
3060 ETWA STREET, ROOM 306
LIHUE, KAUAI, HAWAII 96766

ALLAN A. SMITH
INTERIM CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

ROBERT K. MASUDA
DEPUTY DIRECTOR

PETER T. YOUNG
DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES
BOATING AND OCEAN RECREATION
BUREAU OF CONVEYANCES
COMMISSION ON WATER RESOURCE MANAGEMENT
CONSERVATION AND COASTAL LANDS
CONSERVATION AND RESOURCES ENFORCEMENT
ENGINEERING
FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KAROLAE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

June 29, 2007

MEMORANDUM

TO: Thomas Kaiakapu

FROM: Andrea Erichsen

SUBJECT: Haena Pt. Investigation of Dead Seabirds

On June 14, 2007 I met with Karen Diamond (826-5150) and Barbara Robeson at Haena Pt. (makai side driveway at address 5-7544 off of State Highway 560). Time of visit 11:40-12:40.

The purpose of my site visit was to investigate reported dead shearwaters brought to my attention by Heather Young who relayed a message from Karen Diamond on June 12, 2007.

I found two dead wedge-tailed shearwaters (photographs attached). One carcass was not retrieved due to the fence. The cause of death was not medically determined but could have been due to ground disturbance of burrows and or predation by dog(s). Don Heacock of DAR may have found additional seabird carcasses during his site visit.

There is ample evidence that the naupaka and ironwood vegetation is suitable and occupied wedge-tailed shearwater nesting habitat although the precise population size has not yet been determined. There is also clear evidence of earth-moving machinery, planting, and other types of physical disturbance to the occupied nesting habitat.

There is also evidence of dogs in the area and several were seen during my site visit.

I contacted DOCARE (274-3521 - officer Tanaka) as well as Dolan Eversole of DLNR Office of Planning, Coastal Zone Management on O'ahu (587-0321). Don Heacock of DAR also visited the site and is preparing his own report which I think will complement this one.

I would like to contact the landscaping company to advise them not to dig in areas of seabird colonies but have not had luck yet contacting anyone. Apparently, a Mr. Mark Soppelan of Haena owns the company 826-6183. This area is also HI monk seal and HI green sea turtle haul out habitat that is being planted with dense and spreading native and non-native vegetation that has encroached upon a significant portion (approx. 40%) of the existing beach.

I have many other site photos but have attached some specific to protected seabirds.